IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 3362/2006
(Bhagwan Ram Vs. State of Rajasthan)

Date of Order : 30/04/2007

PRESENT
HON'BLE MR. JUSTICE H.R.PANWAR

Mr. H.S.Sidhu for the petitioner.
Mr. B.L.Tiwari Dy.G.A. for the respondent.

BY THE COURT:-

By the instant writ petition under Article 226 of the Constitution of India, the petitioner seeks a direction to the respondent to make a reference under Section 10 (1) of the Industrial Disputes Act, 1947 (for short 'the ID Act' hereinafter) to the labour court and quashing the order dated 5.7.2004 Annex.P-2.

The facts and circumstances giving rise to the instant writ petition are that the petitioner raised an industrial dispute before the Labour Commissioner, Jodhpur by filing a complaint on 03.2.2003 alleging therein that the petitioner was retrenched from the services on 1.1.1987 in violation of the principles of Section 25 F of the ID Act. Appropriate Government, the State of Rajasthan, by order dated 5.7.2004 declined to make reference on the ground that the industrial dispute has been raised after a delay of more than 16 years without plausible

explanation for such a delay. Thus, there remains no dispute. Though while declining to make reference, it has also been stated that the employer has not retrenched the services of the workman, but the workman left the work at his own more than 16 years ago. Hence this petition.

It is contended by learned counsel for the petitioner that it is not open for the respondent State to adjudicate the dispute on merit and according to learned counsel what is required is that when a dispute is raised, the Appropriate government is to refer the same for adjudication to the Industrial Tribunal cum Labour Court. Learned counsel for the petitioner has relied on decisions of Hon'ble Supreme Court in Telco Convoy Drivers Mazdoor Sangh and Another Vs. State of Bihar and Others (1989) 3 SCC, 271, Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Another (1999) 6 SCC 82, Mahavir Singh Vs. U.P. State Electricity Board and Others (1999) 9 SCC, 178, Shahaji Vs. Executive Engineer, PWD (2005) 12 SCC 141 and a decision of this Court in Bhikharam Vs. State of Rajasthan and Ors. RLR 2000 (3) 548 (Raj.).

Learned Deputy Government Advocate appearing for the State contended that the respondent State has declined to make the reference mainly on the ground that the petitioner has raised the industrial dispute after expiry of more than 16 years

and inordinate delay in raising dispute has not been explained, therefore, in view of the recent decisions of Hon'ble Supreme Court, the State Govt. was justified in declining to make the reference to the Labour Court. He has relied on decisions of Hon'ble Supreme Court in Nedungadi Bank Ltd. Vs. K.P.Madhavankutty and Others (2000) 2 SCC 455, Secretary, Indian Tea Association Vs. Ajit Kumar Barat and Others (2000) 3 SCC 93 and Haryana State Coop. Land Development Bank Vs. Neelam (2005) 5 SCC 91.

I have given my thoughtful consideration to the rival submissions made by the counsel for the parties.

In the instant case, the petitioner came with a case by filing a complaint before the Labour Commissioner, Jodhpur on 3.2.2003 that he was engaged by the Regional Forest Officer, Bilara w.e.f. March, 1983 and worked upto December, 1986 and was retrenched from service on 1.1.1987 without making compliance of Section 25-F of the Industrial Disputes Act. In whole of the writ petition, the petitioner has not shown any plausible explanation for such an inordinate delay of more than 16 years in making the complaint. The retrenchment is alleged to be of 1.1.1987 and indisputably, the complaint was filed before the Labour Commissioner after expiry of more than 16 years and the Conciliation Officer came to the conclusion that it was the petitioner who left the work at his own more than 16

years ago and the respondent noticing the fact that the reference has been made grossly belatedly i.e. after expiry of more than 16 years, came to the conclusion that no such dispute exists and declined to make the reference to the labour court.

In Telco Convoy Drivers Mazdoor Sangh (supra), the Hon'ble Supreme Court held that it is true that in considering the question of making a reference under Section 10 (1), the government is entitled to form an opinion as to whether an industrial dispute "exists or is apprehended". The formation of opinion as to whether an industrial dispute "exists or is apprehended" is not the same thing as to adjudicate the dispute itself on its merits. While exercising power under Section 10 (1) of the Act, the function of the appropriate government is an administrative function and not a judicial or quasi-judicial function, and that in performing this administrative function the government cannot delve into the merits of the dispute and take upon itself the determination of the lis, which would certainly be in excess of the power conferred on it by Section 10 of the Act. However, there may be exceptional cases in which the State Government may, on a proper examination of the demand, come to a conclusion that the demands are either perverse or frivolous and do not merit a reference.

In Ajaib Singh's case (supra), the respondent Management has not shown to have taken any plea regarding

delay and therefore, while dealing with the contention with regard to application of provisions of Article 137 of the Limitation Act, 1963, the Apex Court held that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence.

In Mahavir Singh's case (supra), while considering the case of workman who raised the industrial dispute six years after the termination of services, in which, the reference was made by the Appropriate Government to the labour court and labour court adjudicated the reference and held that the termination was illegal but considering the delay in raising the dispute 50% of the back wages were directed to be paid to the workman, the matter was carried to the High Court under Article 226 of the Constitution of India, the High Court took the view that as the dispute was raised belatedly, the reference itself was incompetent, Hon'ble Supreme Court held as under :-

> "Once the termination is held to be illegal, we fail to appreciate how the entire reference could have been rejected. The dispute lingered on for a number of years. That would not mean that the dispute had ceased to exist. It is, of course, true that belatedly the dispute was raised but that has been taken care of by the Labour Court by not

> awarding full back wages but only 50% of the back wages all throughout from the date of termination till reinstatement. Such order as passed by the Labour Court could not be said to be in any way uncalled for and illegal."

In Shahaji Vs. Executive Engineer, PWD (supra), Hon'ble Supreme Court whle considering the delay/ laches in raising the industrial dispute observed as under :-

> "In the instant case there was no ground of delay urged by the management. Moreover, even if there was delay in making the reference to the Labour Court, if it came to the conclusion that the termination was illegal, it could have suitably moulded the relief to be granted to the workman in view of the delay. In such cases the award of back wages may either be not permitted or curtailed."

In Bhika Ram Vs. State of Rajasthan and Ors. (supra), this Court held that power of the Govt. to refuse to make reference is limited. The Govt. has no jurisdiction to decide as to whether workman completed 240 days or not and cannot refuse to make reference by concluding that workman has failed to prove that he had worked for 240 days in a calender year.

In Nedungadi Bank Ltd. Vs. K.P. Madhvankutty and Others AIR 2000 SC 839 Hon'ble Supreme Court held that although law does not prescribe any time limit for the appropriate Government to exercise its power under Section 10 of the Industrial Disputes Act, 1947, it is not that this power can

be exercised at any point of time so as to revive the matters which had become stale. The learned Judges have held that this power has to be exercised reasonably and in a rational manner and if there is no rational basis for the Government to refer the dispute after long delay which in that case was 7 years, the Government would be justified in rejecting the reference of the dispute.

In S.M.Nilajkar and Ors. Vs. Telecom District Manager, Karnataka (2003) 4 SCC 27 before the Hon'ble Supreme Court it was submitted on behalf of the respondents therein that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants therein. The Apex Court did not agree with the contention relying on earlier decision of the Hon'ble Supreme Court in Shalimar Works Ltd. Vs. Workmen AIR 1959 SC 1217 wherein it has been held that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute, it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an Industrial Tribunal; even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed, particular so when disputes relate to discharge of workmen wholesale.

In Ratan Chandra Sammanta Vs. Union of India 1993 (supp (4) SCC 67 Hon'ble Supreme Court held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself; lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available.

In U.P. State Road Transport Corpn. Vs. Babu Ram (2006) 5 SCC 433, Hon'ble Supreme Court held that so far as delay in seeking reference is concerned, no formula of universal application can be laid down for determination of the said question, it would depend on facts of each individual case.

In Asstt. Engineer, CAD, Kota Vs. Dhan Kunwar (2006) 5 SCC 481, Hon'ble Supreme Court held that it may be noted that so far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

In Haryana State Coop. Land Development Bank Vs. Neelam (2005) 5 SCC 91 Hon'ble Supreme Court held that although, the court cannot import a period of limitation when the statute does not prescribe the same, as was observed in Ajaib Singh Vs. Sirhind Cooperative Marketing-cum-Processing Service Society Limited and Another (supra) but it does not mean that irrespective of the facts and circumstances of each case, a stale

claim must be entertained by the appropriate Government while making reference or in a case where such reference is made the workman would be entitled to the relief at the hands of the Labour Court.

In State of Bombay Vs. K.P.Krishnan and Ors. AIR 1960 SC 1223, a Constitution Bench of Hon'ble Supreme Court held that an obligation is imposed on the Government to refer the dispute unless of course it is satisfied that the notice is frivolous, or vexatious or that considerations of expediency required that a reference should not be made. However, while making an order of refusing to make a reference, the extraneous or irrelevant or which are not germane, and while considering the expediency, the Appropriate Government is not excluded to consider whether or not, it should exercise its power to make a reference. Even in dealing with the question as to whether it would be expedient or not to make a reference, the Government must not act in punitive spirit but must consider the question fairly and reasonably and take into account only the relevant facts and circumstances. This view has also been reiterated by the Apex Court in Madhya Pradesh Irrigation Karamchari Sangh Versus State of M.P. And another (1985) 2 SCC 102 and V. Veeranajan and others Versus Government of Tamil Nadu (1987) 1 SCC 479.

In State of Gujarat Vs. Patel Raghav Natha and Ors.

AIR 1969 SC 1297, Hon'ble Supreme Court while considering the question as to whether the Commissioner can revise an order made under Section 65 at any time held that it is true that there is no period of limitation prescribed under Section 211, but this power must be exercised in reasonable time.

In Workmen Vs. I.I.T.I. Cycles of India Ltd. and Others 1995 Supp (2) Supreme Court Cases, 733 Hon'ble Supreme Court held that it is not obligatory on the part of the Appropriate Government to make a reference of a dispute in each and every case where the reference is sought as the Government has to weigh the facts keeping in mind the objective of industrial peace and smooth industrial relations between the parties and where the reasons given by the Government for not making the reference, are found to be relevant, the Courts cannot interfere.

In Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim (1997) 6 SCC 71 Hon'ble Supreme Court held that wherever a power is vested in a statutory authority without prescribing any time-limit, such power should be exercised within a reasonable time.

In N. Balakrishnan Vs. M. Krishnamurthy (1998) 7 SCC 123, Hon'ble Supreme Court held that a legal remedy cannot be kept alive for unreasonable period even if the statute does not provide for any limitation.

In Bombay Union of Journalists Vs. State of Bombay and another, AIR 1964 SC 1617, the Hon'ble Apex Court held that while considering the question as to whether a reference should be made under Section 12 (5), the Appropriate Government has to act under Section 10 (1) of the Act which confers discretion on the Government either to refer the dispute or not to refer it. Under Section 12 (5) of the Act, the appropriate Government is under an obligation to record reasons for not making the reference. However, when the question involves raising a question of law and disputed question of fact, the Appropriate Government should not purport to reach a final decision on the same as it is a subject matter to be decided by the Industrial Tribunal, but it cannot be said that the Appropriate government is precluded from considering even prima-facie the merit of the dispute when it decides the question as to whether its power to make a reference should be exercised under Section 10 (1) r/w Section 12 (5) of the Act. The Hon'ble Supreme Court further held that if the claim made is patently frivolous or is clearly belated, the Appropriate Government may refuse to make reference.

In the instant case, the petitioner-workman, whose services were said to have been discontinued by the respondent on 1.1.1987, sought to make the reference after a lapse of more than 16 years without any valid reasons and therefore, the

respondent Appropriate Government declined to make the reference.

Undoubtedly, there is no limitation provided for making the application for reference, but it is culled from the various decisions of Hon'ble Supreme Court referred herein above that where no limitation is provided, the aggrieved party may approach the authority/ tribunal/Court within reasonable period. The reference may be made to the decisions of Hon'ble Supreme Court in Mohamad Kavi Mohamad Amin Vs. Fatmabai Ibrahim (supra), State of Gujarat Vs. Patel Raghav Natha and Ors. (supra), N. Balakrishnan Vs. M. Krishnamurthy (supra), Nedungadi Bank Ltd. Vs. K.P. Madhvankutty and Others (supra), S.M. Nilajkar and Ors. Vs. Telecom District Manager, Karnataka (supra), Ratan Chandra Sammanta Vs. Union of India (supra).

The public policy manifested in Industrial Legislation is to achieve the aim of justice and to maintain peace. Long Dormant claims have often more of cruelty than of justice in themselves and therefore, a legal remedy cannot be kept alive for unreasonable period even if the Statute does not provide for any limitation. In this view of the matter, I am of the considered opinion that the reasons recorded by the respondent Appropriate Government for not making the reference after a lapse of more than 16 years cannot be said to be unreasonable or unjust. The order impugned, therefore, does not warrant any interference in

the writ jurisdiction.

The writ petition has no force and it is therefore, dismissed. There shall be no order as to costs.

(H.R.PANWAR),J.

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